

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000005-001 DT

04/02/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

CHARLES ANTHONY GOSMAN

CHARLES ANTHONY GOSMAN
#123187
PO BOX 22-100
NEWTON TX 75966

v.

DORA SCHIRRO (001)

MARY J GREGORY

JUDGE COLE

MINUTE ENTRY

This Court has jurisdiction over Special Actions and proceedings pursuant to the Arizona Constitution Article VI, Section 18, and the Arizona Rules of Procedure for Special Actions.

This Special Action has been under advisement since the receipt of the Respondent's response on February 18, 2004. This Court has considered and reviewed the Petition for Special Action and the response to the Petition for Special Action, both filed in this case.

Petitioner, Charles Anthony Gosman, is a prisoner in the custody of the Arizona Department of Corrections. Gosman has requested habeas corpus or Special Action Relief and an order that the Arizona Department of Corrections recalculate his prison sentence. On August 30, 1996, the Petitioner was sentenced by the Honorable David R. Cole to 10.5 year prison sentences for each of four (4) armed robbery convictions in Maricopa County Superior Court. In two cases, the 10.5 year prison sentences were ordered to be served concurrently (CR 96-01460 and CR 96-01462). In the third and fourth cases, Petitioner was ordered to serve his 10.5 year prison sentences consecutive to the sentences in CR 96-01460 and CR 96-01462 (the third and fourth convictions occurred in CR 96-01461 and CR 96-01463).

Incredibly, in 1999 when the Petitioner applied for commutation of the first 10.5 year sentence, the Arizona Board of Executive Clemency recommended to Governor Jane Hull that the Petitioner's first sentence be commuted to 5.5 years. Governor Hull denied the commutation request but her denial was not attested formally by the Secretary of State. Petitioner now

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contends that pursuant to McDonald v. Thomas¹ that the Governor's denial of commutation is void because the Governor's signature on the denial was not attested by the Secretary of State. Petitioner seeks an order from this court that the Arizona Department of Corrections immediately recalculate his sentence at 5.5 years.

This Court has reviewed the pleadings, documents submitted by both parties, and McDonald v. Thomas². This Court concludes that the Petitioner has misread and misconstrued applicable statutory and case law. A.R.S. Section 31-402(D) provides that unanimous recommendations for commutation by the Arizona Board of Executive Clemency become effective automatically if not acted upon by the Governor within ninety (90) days. The recommendation made by the Arizona Board of Executive Clemency in the Petitioner's case was not unanimous. Admittedly, Governor Hull's signature was not attested by the Secretary of State within the 90-day period; however, the recommendation of the Arizona Board of Executive Clemency did not automatically become effective without action by the Governor, because it was not a unanimous recommendation.

Therefore, this Court concludes that the Petitioner is not entitled, as a matter of law, to the relief that he has requested in his Petition for Special Action.

IT IS ORDERED denying the Petition for Special Action.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ 202 Ariz. 35, 40 P.3d 819 (2002)

² Id.